

IN THE SENATE

SENATE BILL NO. 1142

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO OPEN PUBLIC MEETINGS; AMENDING SECTION 67-2343, IDAHO CODE, TO AMEND PROVISIONS RELATING TO NOTICE REQUIREMENTS FOR MEETINGS AND AGENDAS; AMENDING SECTION 67-2344, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE WRITTEN MINUTES OF MEETINGS; AMENDING SECTION 67-2345, IDAHO CODE, TO REVISE PROVISIONS RELATING TO EXECUTIVE SESSIONS; AND AMENDING SECTION 67-2347, IDAHO CODE, TO REVISE PROVISIONS RELATING TO VIOLATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2343, Idaho Code, be, and the same is hereby amended to read as follows:

67-2343. NOTICE OF MEETINGS – AGENDAS. (1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. ~~A forty eight (48) hour agenda notice shall be required in advance of each regular meeting, however, additional agenda items may be added after completion of the agenda up to and including the hour of the meeting, provided that a good faith effort is made to include in the notice all agenda items known at the time to be probable items of discussion.~~ The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

SECTION 2. That Section 67-2344, Idaho Code, be, and the same is hereby amended to read as follows:

67-2344. WRITTEN MINUTES OF MEETINGS. (1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes of pertaining to executive sessions. Minutes pertaining to an executive session shall be limited to include a specific reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to convey the general subject matter identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

SECTION 3. That Section 67-2345, Idaho Code, be, and the same is hereby amended to read as follows:

67-2345. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (1) ~~Nothing contained in this act shall be construed to prevent, upon a two-thirds (2/3) vote recorded in the minutes of the meeting by individual vote, a governing body of a public agency from holding an executive session during any meeting, after the presiding officer has identified the authorization by specific reference to one (1) or more of paragraphs (a) through (j) of this subsection for the holding of such executive session.~~ An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion

1 and the vote shall be recorded in the minutes. An executive session shall be authorized by a
 2 two-thirds (2/3) vote of the governing body. An executive session may be held:

3 (a) To consider hiring a public officer, employee, staff member or individual agent,
 4 wherein the respective qualities of individuals are to be evaluated in order to fill a
 5 particular vacancy or need. This paragraph does not apply to filling a vacancy in an
 6 elective office or deliberations about staffing needs in general;

7 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or
 8 charges brought against, a public officer, employee, staff member or individual agent, or
 9 public school student;

10 (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real
 11 property which is not owned by a public agency;

12 (d) To consider records that are exempt from disclosure as provided in chapter 3, title 9,
 13 Idaho Code;

14 (e) To consider preliminary negotiations involving matters of trade or commerce in
 15 which the governing body is in competition with governing bodies in other states or
 16 nations;

17 (f) To communicate with legal counsel for the public agency to discuss the legal
 18 ramifications of and legal options for pending litigation, or controversies not yet being
 19 litigated but imminently likely to be litigated. The mere presence of legal counsel at an
 20 executive session does not satisfy this requirement;

21 (g) By the commission of pardons and parole, as provided by law;

22 (h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho
 23 Code;

24 (i) By the custody review board of the Idaho department of juvenile corrections, as
 25 provided by law; or

26 (j) To engage in communications with a representative of the public agency's risk
 27 manager or insurance provider to discuss the adjustment of a pending claim or prevention
 28 of a claim imminently likely to be filed. The mere presence of a representative of the
 29 public agency's risk manager or insurance provider at an executive session does not
 30 satisfy this requirement.

31 (2) Labor negotiations may be conducted in executive session if either side requests
 32 closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent
 33 sessions of the negotiations may continue without further public notice.

34 (3) The exceptions to the general policy in favor of open meetings stated in this section
 35 shall be narrowly construed. It shall be a violation of this act to change the subject within the
 36 executive session to one not identified within the motion to enter the executive session or to
 37 any topic for which an executive session is not provided.

38 (4) No executive session may be held for the purpose of taking any final action or
 39 making any final decision.

40 SECTION 4. That Section 67-2347, Idaho Code, be, and the same is hereby amended to
 41 read as follows:

42 67-2347. VIOLATIONS. (1) If an action, or any deliberation or ~~decision-making~~
 43 decision making that leads to an action, occurs at any meeting which fails to comply with the
 44 provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and
 45 void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who ~~knowingly~~ conducts or participates in a meeting which violates the provisions of this act shall be subject to a ~~fine~~ civil penalty not to exceed ~~one hundred fifty dollars (\$150.00) for a first violation and not to exceed three hundred dollars (\$300) for each subsequent violation as a civil penalty.~~

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(46) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the ~~violation or alleged violation of~~ decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) (a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

1 (c) All enforcement actions shall be stayed during the response and cure period but may
2 recommence at the discretion of the complainant after the cure period has expired.

3 (d) A cure as provided in this section shall act as a bar to the imposition of the civil
4 penalty provided in subsection (2) of this section. A cure of a violation as provided in
5 subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty
6 provided in subsection (4) of this section.